

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Health
Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

COMMISSION ON MENTAL
HEALTH SERVICES

Petitioner,

v.

ARNIDA LAMONT

Respondent

Case No.: C-00-80007

THELMA McCAWLEY

Petitioner,

v.

COMMISSION ON MENTAL
HEALTH SERVICES

Respondent

Case No.: C-00-80008

**ORDER DISMISSING WITHOUT PREJUDICE RESPONDENT ARNIDA LAMONT'S
APPLICATION FOR A HEARING**

These related cases arise under D.C. Code Title 32, Chapter 14, the Nursing Home and Community Residence Facilities Protections Act of 1985. The first case (No. C-00-80007)¹ involves Respondent Arnida Lamont, who has identified herself as the administrator of a Community Residence Facility ("CRF") located at 36 U Street, NW. Respondent Lamont received a notice from Petitioner, the Commission on Mental Health Services ("Commission"),

¹ The second case, *Thelma McCawley v. Commission on Mental Health Services* (Case No. C-00-80008) was disposed of under a separate consent order entered on April 19, 2000.

stating that it was the Commission's intent to involuntarily transfer all residents living in her facility no later than April 21, 2000. Ms. Lamont filed an application with this administrative court seeking an evidentiary hearing through which to oppose this action. The Commission opposed the application and moved that it be denied or dismissed as untimely. For the reasons discussed below, Respondent's application for an evidentiary hearing will be denied without prejudice to its timely renewal.²

A status hearing was held on April 19, 2000, in which all parties were represented by counsel. Pursuant to the Order of April 16, 2000, all counsel came prepared to discuss and argue the legal bases for the various actions taken and applications filed by their respective clients. The Commission's counsel clarified that her client intended to make the involuntary transfers at issue in this case under D.C. Code § 32-1435(a)(1). Counsel for Ms. Lamont stated that she opposed the Commission's effort to transfer residents from her facility; that the Commission's proposed transfer does not meet the substantive requirements of D.C. Code § 32-1435(a)(1); and that she, as a CRF administrator, is entitled to a pre-transfer evidentiary hearing before this administrative court to contest the Commission's proposed action. The Commission asked that Respondent Lamont's hearing application be denied or dismissed as untimely, asserting that the hearing statute creates a right to an evidentiary hearing only after the Commission completes a transfer.³

² To accommodate the parties' accelerated timeline, an oral ruling denying Respondent's application for a pre-transfer evidentiary hearing was entered on April 19, 2000. This Order expands on the reasoning underlying that decision.

³ Respondent Lamont also challenged the Commission's proposed transfer by asserting that it had failed to timely hold an informal conference with her under D.C. Code § 32-1436. The Commission conceded that the statute applied, but responded that Respondent Lamont had not served the Commission with proper notice invoking her right to the informal conference. After brief oral argument on this issue, the Commission agreed to waive the alleged defects in the adequacy of the notice, and Respondent agreed to waive any prior defects relating to the

During the April 19, 2000 hearing, counsel for the Commission asserted that subject to the requirements of D.C. Code § 32-1436, it is generally authorized to complete resident transfers that it deems lawful and appropriate without intervention by an administrative court. D.C. Code § 32-1439. Counsel for Ms. Lamont argued against the Commission's position, asserting that it is within this administrative court's discretion to grant a pre-transfer hearing.⁴ Respondent's hearing right in this case is controlled by D.C. Code § 32-1439 because the Government has made clear it is proceeding under § 32-1435(a)(1) with regard to the proposed transfers. Therefore, the statutory requirement is that the hearing must be held "within 10 calendar days after a transfer or discharge" § 32-1439(a) (emphasis supplied). The language of § 32-1439 makes clear that the D.C. Council intended that the hearing be a post-deprivation remedy. The administrative court, therefore, cannot sustain Respondent's application for a hearing before the transfer occurs. Such an action would impermissibly substitute the judgment of an administrative law judge for that of the legislature. The administrative court must follow a

Commission's timeliness in convening the conference. The parties agreed on the record that the informal conference would take place before the Commission relocated any residents.

⁴ Ms. Lamont also asserted that the Commission's written notice to her was defective because it contained minor or typographical errors. Respondent's counsel did not claim material prejudice from these errors, but cited the decision of this administrative court in *Quality Care Services v. Brown*, Case No. C-00-80004 (Order dated March 16, 2000, D.C. DOH-OAH), for the proposition that the Nursing Home and Community Residence Facilities Protections Act ("Protections Act") requires strict compliance with notice requirements preceding a transfer of discharge. The citation to *Quality Care*, however, is inapposite. The operative notice and transfer statutes in this case are significantly less exacting than those that were at issue in *Quality Care*. Compare D.C. Code §§ 32-1431-1432 and §§ 32-1435-1439. This statutory contrast is consistent with the factual distinction between the two cases. Here we are dealing with a transfer initiated by a Government actor that is presumptively acting in the resident's and public's best interests. In *Quality Care*, the administrative court was dealing with a mentally disabled group-home resident facing imminent eviction by a private group home operator. The resident's emergency petition claimed substantial prejudice caused by inadequate notice resulting in inadequate time to retain counsel and prepare a case. Section 32-1432 was specifically designed to guard against such risks. They are not present for Respondent Lamont in this case.

remedial structure created by the legislature so long as it is constitutionally permissible. *See, Matthews v. Eldridge*, 424 U.S. 319, 332-36 (1976).

It appears that Respondent has raised colorable legal and factual issues regarding the Commission's proposed transfer of residents from her facility. Her application for a hearing, however, cannot be deemed timely under District of Columbia law until such time, if ever⁵, as the transfers actually occur. Consequently, Respondent Lamont's application for a hearing will be denied and dismissed without prejudice.

Therefore, upon the Commission's Motion to Dismiss, Respondent Lamont's application for a hearing, the arguments of all parties, and the entire record in this case, it is hereby, this _____ day of _____, 2000:

ORDERED, that the application for a hearing before an Administrative Law Judge in the matter of *Commission on Mental Health Services v. Arnida Lamont* (Case No. C-00-80007) is denied without prejudice. Respondent Lamont may renew her application at such time as is consistent with the procedures set forth in D.C. Code § 32-1439 or other applicable law.

/s/ 5/16/00

Paul Klein
Chief Administrative Law Judge

⁵ The Commission's dispositive arguments were grounded in the statutory construction of D.C. Code § 32-1439. The Commission did not advance arguments based on the prudential doctrine of ripeness, and that doctrine does not form a basis for this decision. *See, Metropolitan Baptist Church v. Dept. of Consumer and Regulatory Affairs*, 718 A.2d 119, 130 (D.C. 1996); *Washington Gas Light v. Public Service Com'n*, 508 A.2d 930, 935-36 (D.C. 1986).